

EXHIBIT D

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SUPPLEMENTAL ENVIRONMENTAL PROJECT

A. Preface

In consideration of the settlement of the enforcement action under the Clean Water Act resolved by this Consent Decree, the City and WMU shall complete the Supplemental Environmental Project ("SEP") described below. The City and WMU will fully and faithfully perform all obligations and observe and fulfill all conditions with respect to the SEP as set forth in this Consent Decree. The provisions of this SEP are hereby incorporated by reference into the Consent Decree as if fully set out therein. The failure of the City and WMU to perform any obligation, or to observe or fulfill any condition of the SEP, shall be deemed a failure to comply with the requirements of the Consent Decree.

B. Project Description

The City and WMU shall treat the "first flush" of the discharge of Town Branch, a tributary stream to Strodes Creek, for a selected pollutant group.

The benefit of the proposed project is: enhanced water quality for the Licking River Watershed and its tributary streams. The Town Branch stream is one of the streams which has been subject to SSOs in the past.

C. Background

The Licking River Watershed is one of 13 major watersheds in Kentucky. The South Fork of the Licking River is formed by Stoner Creek and Hinkston Creek. Strodes Creek is one of three tributary waterways to Stoner Creek. The headwaters of Strodes

Creek lie within the city limits of Winchester in two sub-watersheds – Strodes Creek with three, unnamed sub-watersheds and Town Branch with three, unnamed sub-watersheds.

Town Branch drains 2,351 acres, or approximately 3.67 square miles. Land use within the Town Branch Watershed includes residential, commercial, and industrial. A major transportation corridor, I-64, and the I-64 Exit 96 bisect the Town Branch Watershed. Town Branch drains the entire central business district (“CBD”) of the City. The CBD dates to the 1790s.

Town Branch served as the water supply for the City until 1891. The earliest sanitary sewers in the City date to 1912. Since the City’s founding in the 1790s, Town Branch has served as the major drainage conduit for the City. Originally an open drainage-way, Town Branch, over the years, has been modified with rock and concrete walls and is covered by streets and buildings in the CBD. Nine of the SSO locations listed in Exhibit A of the Consent Decree are tributary to Town Branch (Strodes Creek Basin C).

Strodes Creek has been designated an impaired waterway under Section 303(d) of the Clean Water Act based upon water quality. The pollutant load to Strodes Creek is believed to be the result of non-point discharges from both agricultural and urbanized areas. The pollutant load to Strodes Creek is believed to include:

- Inorganics – sand, grit, gravel, dirt, floatables
- Organics – synthetic compounds
- Nutrients – nitrogen, phosphorus

- Metals – copper, lead, zinc
- Hydrocarbons – petroleum products, oil, grease
- Pathogens – fecal coliforms, viruses, bacteria

D. Project Approach

INITIAL SAMPLING AND ANALYSIS

Samples will be collected for a variety of flows at a point downstream of the convergence of the three unnamed tributaries of Town Branch and downstream of all known SSOs. The samples will be analyzed by a certified laboratory in order to determine the character of the pollutant load to Town Branch. The sampling protocols for time, frequency, and flow will be proposed by the City and WMU for review and approval by EPA. The sampling period shall be 12 months to collect data based upon a wide variety of flow and weather conditions. Following analysis and review of the pollutant character, the City and WMU will propose, and EPA will approve, a target pollutant group for treatment.

DESIGN / CONSTRUCTION – BEST MANAGEMENT PRACTICE

Based upon the target pollutant group, the City and WMU will recommend Structural Best Management Practices (BMP(s)) and treatment techniques for review and approval by EPA. The Structural BMP(s) shall consist of an “end-of-pipe” treatment system for the first flush of Town Branch following a wet weather event.

Subsequent wet weather flow will bypass the treatment system. Structural BMPs may include but are not limited to:

- Sedimentation
- Flotation
- Filtration
- Infiltration
- Adsorption
- Biological Uptake
- Biological Conversion
- Degradation

With the concurrence of EPA, WMU will proceed with site selection, final design and construction of the Structural BMP. The attached Figure 1 delineates the Town Branch Watershed, the three unnamed sub-watersheds, and a site proposed for the Structural BMP and the upstream SSO locations.

E. Operation And Maintenance / Reporting

The City and WMU will be responsible for ongoing operation and maintenance ("O&M") of the Structural BMP. The City and WMU shall develop a Plan of Operation for the Structural BMP, including any required permits, for review and approval by EPA. The City and WMU commit to perform O&M of the Structural BMP for the duration of this Consent Decree.

The City and WMU will sample, test, and maintain records of water quality both upstream and downstream of the Structural BMP, and will sample, test, and maintain

records of influent and effluent of the Structural BMP to measure the impact of the Structural BMP on water quality. The City and WMU shall prepare and submit to EPA an annual report of their findings at the close of each calendar year.

F. Schedule

The City and WMU shall perform the SEP under the following schedule:

Initial Sampling and Analysis	January 2007 – January 2008 (13 months)
Design Engineering/ Construction	February 2008 – December 2008 (11 months)
Operation and Maintenance / Reporting	January 2009 – December 2025 (17 years)

G. Funding Obligations

The City and WMU shall fund the SEP in the amount of \$230,000.00, which shall be fully used to implement the Initial Sampling and Analysis and Design Engineering and Construction phases of the SEP. The City and WMU are not required to set aside these funds in a separate account. The City and WMU may use their own employees to perform the SEP with proper credits given against the funding obligation for work performed by these employees. Any such credit for work performed by employees of the City and WMU must be supported by time and expense records which are subject to review by EPA. In the event that the City and WMU fail to perform and complete the SEP as set forth in this Exhibit D, they shall pay stipulated penalties in accordance with Section XI of the Decree.

H. General Provisions

1. The City and WMU hereby certify that:

- a. As of the Date of Entry of this Consent Decree, they are not required by any federal, state or local law or regulation to perform or develop the SEP.
- b. They are not required to perform or develop the SEP by any agreement or grant, or as injunctive relief in any other case, or by any state or local law;
- c. They have not received, and are not presently negotiating to receive, credit in any other enforcement action for any of the SEP; and
- d. Funding for the SEP will not include funds from private donations, state or federal loans, or grants.

2. Beginning with the first full calendar year following the Date of Entry, the City and WMU shall submit annual reports to EPA/DOW regarding the progress of implementation of the SEP. The report is due on or before September 30 of each year. Such report shall include the following:

- a. Descriptions of the SEP Project activities undertaken during the previous year;
- b. A financial report for the previous year that provides information on the expenditures made during that period; and
- c. A schedule of activities and anticipated expenditures for the coming year to implement the SEP.

3. Within sixty (60) days of completing the SEP, the City and WMU shall submit a SEP Completion Report to EPA . The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
 - b. A detailed financial accounting of the cost of the SEP, including itemized costs documented by copies of purchase orders and receipts or canceled checks;
 - c. Certification that the SEP has been fully implemented pursuant to the provisions of the Consent Decree;
 - d. Certification that funding for the SEP did not include funds from private donations, state or federal loans or grants; and
 - e. A description of the environmental and/or public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
4. Following receipt of the SEP Completion Report, EPA will do one of the following: (a) accept the Report, (b) reject the Report, in which case EPA will notify the City and WMU in writing of the deficiencies in the SEP Completion Report and grant the City and WMU an additional thirty (30) days in which to correct any deficiencies. The City and WMU agree to comply with any SEP-related requirements imposed by EPA's notice, subject to Dispute Resolution.
5. Disputes regarding the SEP, including the approval or rejection of plans by EPA are subject to the Dispute Resolution provisions of Section XIII of the Consent Decree.
6. If upon receipt of the SEP Completion Report, EPA determines that part or all of the SEP has not been implemented in accordance with the Consent Decree, including this Exhibit D and any statements of work, EPA may require the City and

WMU: (1) to perform additional tasks; (2) to repeat any deficient tasks; or (3) if specific tasks set forth in this Exhibit D were not performed at all, to perform such tasks. EPA shall provide any such requirement to the City and WMU in writing. The City and WMU agree to comply with any SEP-related requirements imposed by EPA's notice, subject to Dispute Resolution.

I. The City and WMU bear the burden of segregating eligible SEP costs from costs not eligible for SEP credit. Any cost evidence that contains costs that are both eligible and not eligible for SEP credits shall be disallowed in its entirety. For purposes of this paragraph "acceptable evidence" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts are not acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made.

J. Any public statement, oral or written, in print, film, or other media, made by the City and WMU making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of a civil enforcement action taken by the United States for violations of the Clean Water Act." If the City and WMU fail to include such language, they shall immediately issue a retraction of the public statement.